

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.79 of 1989.

Date of decision : July 5, 1990.

Niranjan Patra ... Applicant.

Versus

Senior Superintendent of Post
Offices, Bhubaneswar Division and
another ... Respondents.

For the applicant ... M/s.S.S.Mohanty,
R.Ch.Sahoo,
N.Vaheed,&
Mrs.S.L.Patnaik, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The facts leading to this case, briefly stated, are as below.

2. The applicant was appointed as a Postal Assistant in 1983. He was working as a Postal Assistant in the

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General Post Office at Bhubaneswar. On 20.4.1985 a disciplinary proceeding under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was initiated against the applicant and the charge was that the applicant applied for the post of Postal Assistant enclosing a forged true copy of a false Scheduled Caste certificate and thereby secured his selection and appointment under Scheduled Caste quota. The applicant has averred that on 27.1.1989 an order removing him from service by way of penalty has been passed, of course by the date of filing of the application, the same had not been communicated to him. ~~The applicant~~ The applicant has questioned the propriety of initiation of a proceeding under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 on the ground that the filing or production of the certificate was prior to his entry into service, therefore, these Rules cannot be made applicable. The applicant has prayed for quashing the disciplinary proceeding and declaration that the order of removal is without jurisdiction and that his contract of employment subsists.

3. The respondents in their reply in counter have stated that the applicant was appointed against the reserved quota for Scheduled caste candidates on the strength of an attested copy of a certificate filed by him. Later information was received that the scheduled caste certificate was really a forged document and the attesta-

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tion was also not duly done. This matter was inquired into by the Central Bureau of Investigation and on receipt their report, the applicant was charged in a disciplinary proceeding. The case of the respondents further is that a disciplinary proceeding was started against the applicant to afford him an opportunity to defend himself. They have also alleged in their counter that the applicant previously filed an original application to quash the departmental proceeding and this Tribunal refused the prayer to quash the proceeding at that stage by stating that it did not like to express any opinion relating to the contentions of the learned counsel for the applicant that Rule 3 of the Central Civil Services (Conduct) Rules would have no application to the facts of the case or that no disciplinary proceeding could be started against the applicant for filing, if at all, a forged certificate before his appointment.

4. We have heard Mr. S. S. Mohanty, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. On a perusal of the papers it appears that an Enquiring Officer was appointed to inquire into the allegations contained in the charge and he submitted his report. From Annexure-R/2 and Annexure-R/3 it would appear that the order of removal from service was passed on 27.1.1989 and copy of this Order of removal with the copy of the report of the Enquiring Officer was made over to the applicant on 1.3.1989. Since

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the Department chose to draw up a disciplinary proceeding against the applicant for having filed a forged certificate prior to his appointment it should have followed all the procedure which are necessary to be followed in a disciplinary proceeding i.e. the applicant should have been given a copy of the report of the enquiring Officer before the order of removal was passed. In this connection, it would be pertinent to refer to the Full Bench decision of this Tribunal in the case of Premnath K. Sharma v. Union of India reported in 1988 (3) SLJ 449.

5. We have deliberately not discussed about the propriety of calling a proceeding a disciplinary proceeding under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, because even if those Rules would not be applicable, yet no person can be condemned or put to a disadvantage without being afforded an opportunity of being heard in his defence. If the proceeding ^{did not} _A came within the purview of C.C.S. (C.C.A.) Rules, the proviso to Article 311(2) would apply in any case and for that we have relied on Premnath K. Sharma's case.

6. In the result, the case is remitted back to the appointing authority to give a hearing to the applicant. Since the applicant has already received a copy of the enquiry report, no further copy need be supplied to him. The case be disposed of within two months from the date of receipt of a copy of this judgment.

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7. This application is accordingly disposed of
leaving the parties to bear their own costs.

Ramachand
..... 5.7.90
Vice-Chairman

Alka Gupta
..... 5.7.90
Member (Judicial)

